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09/237,687	01/26/1999	ROBERT A. HEIBERGER	1671	7198

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 18

Application Number: 09/237,687
Filing Date: January 26, 1999
Appellant(s): Heiberger

Timothy J. Martin
For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed September 24, 2001.

Art Unit: 3752

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1 and 34 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

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(8) *Claims Appealed*

A substantially correct copy of appealed claim 4 appears on page 1 of the Appendix to the appellant's brief. The minor errors are as follows: in line 3, "wherein limit ear" should read --wherein said limit ear--.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

3,201,013	Porter et al.	8/1965
5,145,094	Perlmutter	9/1992

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 2, 4, 5 and 34 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2 and 5 recite "stop member". It is uncertain whether it is in reference to the ear in claim 1 or another stop member. The "stop member" recited in claim 2 appears to be a double inclusion of the "ear" recited in claim 1. Claim 4 recites "said ear defines a stop member" and claim 5 recites "a pair of said stop members in the form or ears". Claim 5 also recites "slots each sized to respectively engage one of said ears". It is uncertain whether each stop member is in the

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form of ears or both stop members are in the form of ears and it is uncertain if "one of said ears" is in reference to the ears in claim 5 or the ears in claim 5 and the ear in claim 1.

Claim 4 recites the limitation "said limit ear". There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 4, "said limit ear and said slot both the longitudinal movement and restrict rotational movement of said valve body within said sleeve" is unclear.

Claim 34 recites "and is disposed thereon for limiting the longitudinal movement of said valve body within said sleeve between said open and closed position." It is uncertain what it is in reference to.

Claims 1-5, 7, 9 and 33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al. in view of Perlmutter.

Porter et al. disclose a closure A comprising: a cap member 10; a sleeve 24; a valve body 32; a stop member 38, 46; a central post 22; a central cavity 52; an aperture 48; an open inner end 50. Porter et al. disclose, in column 1, lines 15-33 and in column 2, lines 57-65, the resiliency and elasticity of the cap member and the valve body for joining the two members. The same would apply when pulled apart. Porter et al. does not disclose slots and ears. Perlmutter discloses an ear/stop member 41 seated within longitudinal slots between arms 19. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have incorporated the longitudinal slots and pair of stop members of Perlmutter to the device of Porter et al. to selectively lock the valve. It is noted that claims 1 and 34 recite removable and

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deformable, respectively. The limitations only require the ability to so perform. Additionally, the elastic nature (Porter et al., column 1, lines 15-33) of plastic material (Porter et al., column 1, line 70) provides the capability of deformation for removal at a predetermined force. Finally, the valve body 32 of Porter et al. is not precluded from being removed from the cap member 10. The elements are not disclosed as being integral or permanently secured together.

(11) Response to Argument

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Perlmutter discloses, in the abstract, lines 12-15, a twist lock feature is preferably utilized where a gas-tight seal is of major importance.

In response to appellant's argument that Porter et al. nor Perlmutter discloses a removable valve body, claims 1 and 34 recite removable and deformable, respectively. The limitations only require the ability to so perform. Additionally, the elastic nature (Porter et al., column 1, lines 15-33) of plastic material (Porter et al., column 1, line 70) inherently provides the capability of deformation for removal at a predetermined force. Finally, the

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valve body 32 of Porter et al. is not precluded from being removed from the cap member 10.

The elements are not disclosed as being integral or permanently secured together.

In response to appellant's argument that applying the teachings of Perlmutter would destroy the ability of Porter et al. to maintain fluid contents in the container, if so, the closure cap of Perlmutter would also fail to maintain fluid contents in the container, which is not the case. The slots of Perlmutter are below wall 12. Additionally, Porter et al. discloses a seal 40.

In response to appellant's argument that claim 34 is sufficiently definite, claim 34 recites in line 11 (page 3 of appendix A of the appeal brief) "and is disposed thereon". It is uncertain whether the "at least one stop member" (line 9), "a chamfered surface" (line 10) or "a wedge" (line 10) "is disposed thereon". Appellant asserts that "is disposed thereon" can only refer to the "stop member", but clearly, the claim language can be interpreted to read the "chamfered surface" "is disposed thereon". Therefore, the claim is rendered indefinite.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Lesley D. Morris
Primary Examiner

AU 3752



CK

December 1, 2001

Appeal Conference
LM, HY



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